

REMARKS

Claims 1 and 2 have been amended to better define the claimed invention and better distinguish the claimed invention from the prior art. In particular, claim 1 has been amended to recite that the stopper comprises a closure to close the passageway between the chamber and the interior of the bottle, wherein when the passageway is closed the oxygen scavenging medium or oxygen absorber is not in communication with the interior of the bottle and when the passageway is open, the oxygen scavenging medium or oxygen absorber is in communication with the interior of the bottle. Claim 2 has been amended to specify that the bottle stopper has a longitudinal axis. Support for the amendments may be found throughout the originally filed disclosure, including, for example from page 10, line 29 to page 11, line 3 of the specification, and the Figures. Claims 13-21 have been cancelled. No new matter has been entered.

The art rejections are respectfully traversed.

Considering first the rejection of claims 1-4 and 21 under 35 U.S.C. § 102(b) as being anticipated by Merry (U.S. Pat. 4,838,442), as noted supra, claim 21 has been cancelled. As to the remaining claims, amended independent claim 1 requires, in part, “a closure to close the passageway between the chamber and the interior of the bottle, wherein when the passageway is closed the oxygen-scavenging medium or oxygen absorber is not in communication with the interior of the bottle and when the passageway is open, the oxygen-scavenging medium or oxygen absorber is in communication with the interior of the bottle.” At a minimum, it is respectfully submitted that Merry fails to disclose, or even suggest, at least this feature of Applicant’s independent claim 1.

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Merry teaches a stopper that has a lid 8, which separates the metal-air primary cell 32 from the atmosphere outside the bottle. However, the bottle stopper of Merry has no closure between the metal-air primary cell 32 and the interior of the bottle, allowing the metal-air primary cell to be closed from communication with the interior of the bottle. For this reason alone, Merry cannot be said to anticipate or, for that matter, render obvious Applicant's independent claim 1.

The invention of claim 1 works in a completely different way from the bottle stopper taught by Merry, and therefore cannot be said to be obvious from Merry. Merry discloses a metal-air primary cell 32 for removing oxygen from the interior of the bottle, the metal-air primary cell 32 always being in communication with the interior of the bottle when the bottle stopper is in place in the neck of the bottle (O-ring gasket 58, hydrophilic layer 30 and hydrophobic layer 25 do not block the metal-air primary cell 32 from communication with the atmosphere in the interior of the bottle, and will allow oxygen to pass to the metal-air primary cell, see col. 2, lines 28 to 31). In order to initiate the bottle stopper of Merry to start removing oxygen from the interior of the bottle, a removable separator tab 48 positioned between contact 50 and the anode 36 of the cell 32, is removed by the user to allow an electrical path to form between the contact 50 and the anode 36 (see col. 2, lines 47 to 51). This is very different from the invention of claim 1, in which the actuator functions to cause a closure between the interior of the bottle and the oxygen absorber to open, allowing the oxygen absorber to be in communication with the interior of the bottle, and thus to scavenge any oxygen present therein. This is explained in the specification, for example at page 8, line 11 to page 11, line 20 (see also Figures 10-13).

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Thus, it would not have been obvious to modify the bottle stopper of Merry to arrive at the invention of independent claim 1, as there is no teaching in Merry to employ a closure that closes the passageway between the oxygen absorber and the interior of the bottle. Rather, Merry teaches that the lid 8 merely closes off the oxygen removing cell from the exterior of the bottle. Moreover, removable separator tab 48 of the bottle stopper of Merry merely acts to interrupt the electrical path otherwise created between contacts 50 and anode 36; however, separator tab 48 **does not** close off the cell 32 from communication with the atmosphere in the interior or exterior of the bottle, and therefore is in no way a “closure” as required by Applicant’s independent claim 1.

For at least the foregoing reasons, it is respectfully submitted that Merry cannot be said to anticipate or, for that matter, render obvious Applicant’s independent claim 1. Claims 2-4 each depend from independent claim 1 and are therefore allowable over Merry for at least those reasons adduced above relative to the independent claim, as well as for their own additional limitations. Claim 21 has been cancelled, thereby rendering moot the rejection of that claim.

Turning to the rejection of claims 5-11 under 35 U.S.C. § 103(a) as being unpatentable over Merry in view of Balderson et al. (U.S. Pat. 5,617,812; hereinafter “Balderson”), each of claims 5-11 depend from independent claim 1. The deficiencies of Merry with respect to Applicant’s independent claim 1 are discussed above. Balderson, which is cited merely as providing a window and a color change indicator, fails to overcome these deficiencies. That is, Balderson fails to provide any teaching or suggestion of “a closure to close the passageway between the chamber and the interior of the bottle, wherein when the passageway is closed the oxygen-scavenging medium or oxygen absorber is not in communication with the interior of the bottle and when the passageway is open, the oxygen-scavenging medium or oxygen

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absorber is in communication with the interior of the bottle.” Thus, even assuming *arguendo* that the Examiner has correctly characterized the teachings of Balderson, no combination of Merry with Balderson can reasonably be said to render obvious Applicant’s independent claim 1, or any of claims 5-11 which depend thereon.

Moreover, neither claim 2 nor claim 3 that depends thereon can be said to be obvious from Merry in view of Balderson. With regard to claim 2, it is respectfully asserted that Merry fails to provide any teaching or suggestion of a mechanism for compressing a sealing member substantially axially of the stopper to expand the sealing member laterally/substantially radially of the stopper. The Examiner has indicated resilient contact 40 to be a mechanism for compressing a sealing member as claimed. Office Action, page 2. However, Applicant respectfully submits that resilient contact 40 of Merry is **not** a mechanism for compressing a sealing member. The sealing member is defined in Claim 1 as sitting “within a neck of a bottle in use and extending radially outwardly to seal the bottle neck.” Even assuming *arguendo* that the sealing rings 64 of Merry could be considered sealing members which sit within a neck of the bottle in use and extend radially outwardly to seal the bottle neck, there is no mechanism disclosed in Merry for compressing sealing rings 64 “substantially axially of the stopper to expand the sealing rings laterally/substantially radially of the stopper,” as required by claim 2. Merry simply fails to disclose anything which acts to compress sealing rings 40 in a direction parallel to the longitudinal axis of the stopper, such that the sealing rings expand laterally into sealing contact with the neck of the bottle. In contrast, claim 2 requires that the stopper “comprises a mechanism for compressing the sealing member substantially axially of the stopper to expand the sealing member laterally/substantially radially of the stopper.” The claimed mechanism deploys sealing rings into sealing engagement with the neck of the bottle,

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ensuring that the oxygen absorber is only exposed to atmosphere within the bottle (see page 11, lines 7 to 13). For at least this reason, no combination of Merry with Balderson can reasonably be said to render obvious Applicant's claim 2, or claim 3 which depends thereon.

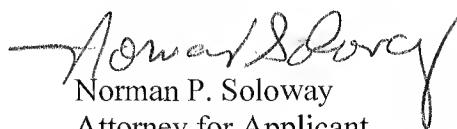
Finally the rejection of claims 13-20 under 35 U.S.C. § 103(a) as being unpatentable over Merry in view of Balderson, claims 13-20 have been cancelled by this amendment, thereby rendering moot the rejection of those claims.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance. Early and favorable action is respectfully requested.

RCE and extension fees are being paid via EFS WEB in the amount of \$470.00.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,

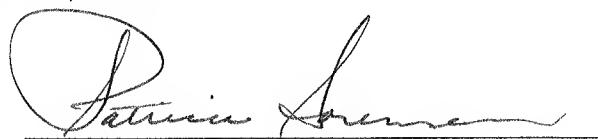

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